

Tarter  
Krinsky  
& Drogin

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 5/7/21

Jonathan E. Temchin

212.216.1139

jtemchin@tarterkrinsky.com

May 6, 2021

**BY ECF**

Hon. Colleen McMahon, U.S.D.J.  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 24A  
New York, NY 10007

Re: **FPK Services LLC v. Edge Interactive et al.**  
**Civil Action No.: 1:20-cv-008635**

Dear Judge McMahon:

MEMO ELECTRONICALLY FILED

This office represents Defendants Edge Interactive LLC and Matthew Race (collectively, "Defendants") in the above-referenced matter. We are writing pursuant to Local Civil Rule 83.9 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York to request that this Court issue an order referring this matter to mediation before Magistrate Judge James L. Cott and staying all deadlines pending the conclusion of mediation.

Plaintiff FPK Services LLC ("Plaintiff") commenced this action against Defendants and has asserted claims of copyright infringement and breach of a non-compete agreement. Defendants have denied the allegations against them and have asserted a counterclaim for a declaration that the non-compete agreement is unenforceable. Since the filing of this action, Plaintiff's counsel and Defendants' counsel have attempted to resolve this dispute in good-faith and have even exchanged draft settlement agreements towards that end. Unfortunately, the parties have not been able to reach a resolution on their own.

As this Court is aware, mediation is a vital alternative to litigation and its benefits include its cost-effectiveness, speed and adaptability. Experience has shown that even where the parties believe that there is no possibility of settlement at the outset of mediation, they may change their minds during the process. In Defendants' view, a neutral mediator's involvement in the settlement discussions may very well bring this matter to a swift conclusion, saving the time and expense of costly discovery and protracted litigation.

Plaintiff's counsel has advised that Plaintiff does not consent to mediation. Nevertheless, I am confident that having a neutral third-party sounding board will advance the matter towards a resolution. Accordingly, Defendants request that this Court issue an order referring this matter to mediation before Magistrate Judge James L. Cott and staying all deadlines pending the conclusion of mediation.

5/6/2021  
I am sorry but unless both parties want to settle I will not waste a day Magistrate Judge's time. I hope the plaintiff will reconsider. Judge Cott is a wonderful mediator!

Hon. Colleen McMahon, U.S.D.J.

May 6, 2021

Page 2

In closing, we thank the Court for its consideration in this matter.

Respectfully submitted,



Jonathan E. Temchin

cc: All Counsel of Record (BY ECF)